



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,302	03/20/2001	Daniel Barber	7094-160	2484

7590 02/10/2004
Woodard, Emhardt, Naughton, Moriarty and McNett
Bank One Center/Tower
Suite 3700
111 Monument Circle
Indianapolis, IN 46204-5137

EXAMINER

LEE, BENJAMIN C

ART UNIT PAPER NUMBER

2632

DATE MAILED: 02/10/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,302

Applicant(s)

BARBER ET AL.

Examiner

Benjamin C. Lee

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36-42 is/are allowed.
- 6) ☒ Claim(s) 1-20, 22-35, 43-47, 49-53, 55-63 and 66-81 is/are rejected.
- 7) ☒ Claim(s) 21, 48, 54, 64 and 65 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Claim Rejections - 35 USC § 102

1. **Claims 1 and 7** are rejected under 35 U.S.C. 102(a) as being anticipated by Su (US pat. #5,815,090) as stand in the previous Office action.

1) In considering claim 1, Su disclosed all of the claimed subject matter:

-- the claimed method of installing a pest control device (Figs. 1-3) including a communication circuit (Fig. 3), and locating the pest control device (Fig. 7) after installation by receiving a wireless transmission (Fig. 3 and col. 4, lines 18-30) from the pest control device (col. 3, lines 45-64).

2) In considering claim 7, Su disclosed all of the claimed subject matter as in claim 1, including:

--the claimed said pest control device is provided with a monitoring bait during said installing and further comprising detecting at least partial consumption of the monitoring bait and installing a pesticide bait in response to said detecting (col. 5, lines 53-60 and col. 7, line 51-56).

Claim Rejections - 35 USC § 103

2. **Claim 68** is rejected under 35 U.S.C. 103(a) as being unpatentable over Su as stand in the previous Office action.

3. **Claims 2-6, 8-16, 23-30, 32-35, 43-45, 47, 49, 56-63, 66-67, 69-76, 78 and 80-81** are rejected under 35 U.S.C. 103(a) as being unpatentable over Su in view of Lowe (US pat. #5,764,138) and Zimmermann et al. (US pat. #3,836,842) as stand in the previous Office action, including:

1) In considering claim 47, Su, Lowe and Zimmermann et al. made obvious all of the claimed subject matter as in claim 43, plus the consideration of claim 33.

4. **Claims 16-20 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Su in view of Lowe as stand in the previous Office action.

5. **Claims 31, 46, 77 and 79** are rejected under 35 U.S.C. 103(a) as being unpatentable over Su in view of Lowe, Zimmermann et al. and Moskowitz et al.(US pat. #5,528,222) as stand in the previous Office action.

6. **Claims 50-52 and 55** are rejected under 35 U.S.C. 103(a) as being unpatentable over Su in view of Lowe and Allen et al. (US pat. #6,178,834) as stand in the previous Office action.

7. **Claims 53** are rejected under 35 U.S.C. 103(a) as being unpatentable over Su in view of Lowe, Allen et al. and Moskowitz et al. as stand in the previous Office action.

Allowable Subject Matter

8. **Claims 36-42** are allowed.

9. **Claims 21, 48, 54 and 64-65** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 11/6/03 have been fully considered but they are not persuasive.

1) Regarding claims 1 and 7, while Applicant may be correct in stating that the Su reference is not very specific in describing the wireless feature of the pest control monitoring device (more specifically claimed wireless communication detail, via use of interrogating

Art Unit: 2632

transponders as recited by latter claims, are being rejected in combination with other prior art under 35 USC 103 rejection), nevertheless the description is of the extend sufficient to meet the similarly broadly claimed language of claim 1: “..installing a pest control device including a communication circuit; and locating the pest control device after installation by receiving a wireless transmission from the pest control device.” Applicant has not pointed out specifically which feature(s), arrangement, relationship or organization of claims 1 & 7 is/are not met by Su. For examples, the Su reference does not need to specify the kind of wireless communication preferred, communication/signal format, or whether a wireless communication device would be included in a housing or given assembly, or integral to or can be separate from a sensor, as long as “the sensor communicate with the data collection unit over independent wireless links formed using wireless communication devices..” (see col. 4, lines 20-30 of Su), since such limitations are not being claimed. The locating of a pest control device after installation by receiving wireless transmission from such a device is clearly shown in Fig. 7 of Su showing the sensor monitor output voltages, the time of such outputs, and the corresponding zones/locations for the sensors, as indicated in the Office action.

2) Regarding claim 68, while the Su disclosure indeed indicates the detection of termites using baits before pesticide application, it does not specifically indicate that such procedure is desired or preferred over the application of bait having a pesticide either. As such, one skilled in the art would have readily recognized that such procedure is but one approach and doesn't have to be the only or preferred way, and since the simultaneous application of pest bait and pesticide has been well known, one skilled in the art at the time of the claimed invention may prefer such

Art Unit: 2632

simultaneous application to simplify the procedure by practicing a single step instead of two, as indicated in the Office action, while not destroying or contracting the Su teaching.

3) Regarding claims 2-6, 8-16, 23-30, 32-35, 43-45, 47, 49, 56-63, 66-67, 69-76 and 80-81: 1) in the sole figure of Lowe, interrogation-response type transponder communication is done via inductor antennas 13, 22, 24. Such communication is short-ranged (normally a few to a few tens of feet). As such, when the transponder is not in communication range, it is indicative of the condition that the transponder is not in proximity to the interrogator; on the contrary, when the transponder is in communication range, it is indicative of the condition when the transponder is in proximity to the interrogator. Therefore, the location of the transponder by mere ability to communicate is inherent by virtue of how these relatively shorted ranged interrogation-transponders work. As a confirmation of such a conclusion, Zimmermann et al. actually shows a specific application of such inherent locating ability. When discussing the locating feature of Lowe in the Office action, it was done in the context of discussing Lowe for the combination with Sue the primary reference, which already uses the location (zones) feature for the sensors. The inherent locating ability of the wirelessly communicating transponder with sensor output of Lowe constitutes a specific implementation of the non-specific wireless sensor output and sensor location feature disclosed in Sue, so that one skilled in the art would have recognized that a known wirelessly sensor output communicating and locating device of Lowe satisfactorily accomplishes the intended objective of Sue, and as such, motivation/suggestion to combine the two teachings is thereby presented. With the combined system of Sue, Lowe and Zimmermann et al., manual inspection is still reduced, as preferred by Sue, by use of interrogating transponders of Lowe and handheld interrogator housing of Zimmermann et al., in that operators

Art Unit: 2632

do not need to manually pull out the sensors to visually inspect them; all they have to do is to be in proximity of a particular sensor to locate and read the status using the interrogator. The reasons for having operators go out to the proximity locations of the sensors are many. For example, one skilled in the art would recognize that when implementing a monitoring system with a very large number of sensors, or when it comes time to modify the location of or add some sensors, a remote central monitoring system taught by Sue alone would be expensive and inflexible since a large number of corresponding readers and connections or their modifications are required, so that using transponders and interrogators taught by Lowe and Zimmermann et al. alleviates such drawbacks while still achieving some level of reduced manual inspection requirement desired by Sue by not requiring operators to manually pull out the sensors from the ground to obtain their status. As used in the Office action, Zimmermann et al. was used to merely show that a known specific handheld transponder interrogator housing provides convenience for handling the interrogator for the operator. Col. 3, line 56 clearly indicated that the monitoring devices are being interrogated by the data collection unit. Furthermore, the feature of the unique identifier transmitted by the RF transmitter was met by Lowe, as stated in the previous Office action. Regarding the rejection of claims 6, 9, 17, 28-30, 32-35, 45 and 59, since Applicant did not provide specifics or evidence of the alleged deficiency of the rejection, Applicant's attention is directed to the previous Office rejection of those claims for detail. Claim 32 merely indicates that the bait includes a magnetic material without any further relation to the rest of the system or its function or operation or usage, and therefore lacking significance and was treated as a result of "by happenstance". As to Applicant's request for a supporting reference, it is a common practice that when it comes to bait for pest,

Art Unit: 2632

handling/storage/transportation by people are not as careful or particular in terms of cleanliness as compared to handling food for humans, for example, and as such, people do not usually ensure that the containers or handling areas are clean before storing, handling or transporting pest baits, even when such containers/areas have residues such as magnetic materials by happenstance, which would mix or attach to the bait. Consideration of claim 47 indicated that claim 47 was rejected over Su, Lowe and Zimmermann et al. as in claim 43, plus the consideration of claim 33, but accidentally included a typographical error of “further in view of Cates or Galyon” after that. Since claim 33 was rejected over Su, Lowe and Zimmermann et al. only, there is no question of what the rejection is based on and of the existence of the typographical error. Regarding claims 69, 71, 74 and 80, the location of pest control devices was taught by Sue, and as indicated above and in the rejection, a general preference in reduction of manual inspection does not mean total elimination in all situations, as cost and adaptability factors may become important in some applications.

4) Regarding claims 16-20, 22, 31, 46, 50-53, 55, 77 and 79, response to Applicant’s arguments are found in the above sections, as the arguments had already similarly presented and addressed.

5) In conclusion, Applicant’s arguments are not deemed persuasive, and the rejection is maintained.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2632


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin C. Lee whose telephone number is (703) 306-4223.

The examiner can normally be reached on Mon -Fri 11:00Am-7:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on (703) 308-6730. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-8576.


Benjamin C. Lee
Primary Examiner
Art Unit 2632

B.L.
February 8, 2004